



Appeal Decision

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2025

Appeal Ref: APP/H5390/X/24/3340986

16-18 Thornfield Road, Hammersmith and Fulham, London W12 8JG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Crenns Developments Ltd against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application ref 2023/00188/CLE, dated 26 January 2023, was refused by notice dated 26 September 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is described in the application as: Flats B at first floor level, Flat C at ground and first floor level (rear right), Flat D at basement floor level (right) and Flat E at basement level (left).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Having considered the evidence submitted, the main considerations in this case, and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the parties were, however, sought on this matter before my determination of the appeal. No objections to this were raised.

Main Issue

3. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue is whether the Council's decision to refuse to grant a LDC is well founded.

The Development and Main Considerations

4. Before determining the appeal, it is essential that there is clarity with regard to the matter for which the LDC is sought. The appeal site comprises what were formerly two mid terrace three storey (lower ground, ground and first floor) properties at 16 and 18 Thornfield Road. I will refer to these from hereon in as 'the appeal property'. In the description of the existing use there is a list of four flats, flat B to flat E. The application form indicates that the LDC is sought for a use of the appeal property; the indication is that the use is as four flats, as listed. The floor plan submitted with the LDC application is annotated to show the location of each

of the four flats within the appeal property. I note that this plan omits part of the ground floor from the annotation. The LDC is not, therefore, sought for the use of the entirety of the appeal property. The Council has confirmed that, at the time of its most recent site visits, the layout of the appeal property was consistent with the submitted floor plan.

5. Having regard to the above, my determination of the appeal will be on the basis of an LDC sought for the use of the appeal property as four flats, the location of each within the property is as indicated on the submitted floor plan.
6. There appears to be no dispute that this use of the appeal property is a breach of planning control. It is not, however, clear what type of breach this is. In its determination of the LDC application, the Council suggests that the existing use is in breach of certain conditions of the previous planning permission, reference 1987/02398/FUL (the 1987 permission), for the site. Under section 171B(3) of the 1990 Act, the relevant time limit for enforcement action in such cases is 10 years.
7. However, the Council also refers to the use of the appeal property as four self-contained flats for a period of 4 years or more. This is the relevant time period where there has been a breach of planning control consisting in the change of use of any building (which includes part of a building) to use as a single dwelling house¹.
8. Having regard to the above and the case made by each party, the main considerations in this appeal are as follows:
 - Whether the breach of planning control in this case comprises a breach of condition or a material change of use of the appeal property; and
 - If a breach of condition, whether this breach has been continuous for a period of 10 years or more, beginning with the date of the breach; or
 - If a material change of use, whether the use of the appeal property as four flats has continued substantially uninterrupted for a period of four years or more beginning with the date of the breach.
9. The onus of proof is on the appellant and the test of the evidence is on the balance of probability. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Reasons

Breach of Condition or Material Change of Use?

10. As a general principle, a condition imposed on a planning permission can control how and by whom the use permitted is carried out. It can also specify what must happen after a permitted use ceases. This is, of course, provided that the conditions comply with the tests set out in the relevant guidance².

¹ In accordance with section 171B(2) of the 1990 Act and section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

² This includes the Planning Practice Guidance on Use of planning conditions.

11. There is no dispute that the 1987 permission permitted a use of the appeal property for a particular purpose; that the permission was implemented by Notting Hill Housing Trust (NHHT); and that the Trust's use of the appeal site was in accordance with the permission granted.
12. Condition 02 of the 1987 permission made it a personal permission, meaning that the use permitted could only be carried out by the individuals stated, which included the Trust. If the use were not carried out by those individuals stated in condition 02, then the use must cease. The continuation of the permitted use by any individual not stated in condition 02 is a breach of the condition; it is not development within the definition set out in section 55(1) of the 1990 Act.
13. However, if the appeal property were used for another purpose, and that use was found to be materially different to the use carried out by NHHT, as permitted in 1987, development within the definition set out in section 55(1) of the 1990 Act would have occurred, regardless of whether or not that use was carried out by an individual stated in condition 02. In these circumstances (i.e. where a material change of use has occurred from the use permitted to some other use), the new use would not have the benefit of the 1987 permission and the permission would no longer be extant (i.e. the lawful use rights established by the grant and implementation of the 1987 permission would be lost). As a consequence, the subsequent use would not be subject to the controls imposed on the 1987 permission.
14. In such circumstances, a breach of condition might also occur, but only where there has been a failure to comply with any conditions that specify what must happen after the permitted use ceases. This is, of course, provided that these conditions are valid.
15. With the above in mind, in determining whether or not the breach of planning control in this case is a breach of condition, I must consider whether the existing use is a continuation of the use permitted in 1987, as carried out by NHHT, such that the 1987 permission is still extant. In doing so, I am mindful that there is reference to two other occupiers after NHHT ceased their use of the property and before the appellant took ownership. This might mean that there have been intervening uses between the use following the 1987 grant of permission and the existing use, which I may need to take into account. However, I will start by comparing the existing use with that permitted in 1987.
16. In establishing the use that was permitted in 1987, I note that the description of the use stated on the decision notice is '2 No. two bedroom and 1 No. three bedroom cluster units and 1 No. one bedroom warden's flat'. There can be no doubt that permission was granted for a residential use of the appeal property. As for the nature of this residential use, whilst I have no difficulty with the reference to a 'warden's flat', I find the reference to 'cluster units' (three in total) to be ambiguous. No plans have been submitted that relate to the 1987 permission to assist with what these cluster units would have comprised and the location within the property of these units and the warden's flat.
17. The Council refers to the warden's flat having been subsequently used as an office in 2022 and I understand from the evidence that the area occupied by this office is excluded from the annotation on the floor plan. The layout and location of the

cluster units and any means of physical connection between each unit and the warden's flat is, however, unclear.

18. Condition 04 of the 1987 permission is of some assistance, it imposes a limitation on the use permitted, stating that 'the premises shall be used as a hostel for the maximum of 7 single homeless persons together with a resident warden'. Condition 03 also refers to the use as a hostel.
19. Although the appellant points out that the description of development does not use the term 'hostel', it does not dispute that the appeal property was used by NHHT in accordance with the 1987 permission, including condition 04. In view of this, there is nothing before me to suggest that the Trust's use of the appeal property was anything other than as a hostel.
20. A use as a hostel previously fell within Class C1 of Part C, Schedule 1 of the former version of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). An amendment to the 1987 Order in 1994 excluded hostels from Class C1, meaning that the use no longer falls within any Class of use within the 1987 Order (it is a sui generis use).
21. The accommodation for the 7 residents at the hostel might well have been provided in three defined units (i.e. the cluster units referred to in the description of development on the 1987 decision notice). However, the provision of the warden's flat indicates that the use of the property as a whole would have been overseen by a warden occupying the warden's flat. The Council also describes the use of the property permitted in 1987 as a shelter for homeless individuals. Without any additional evidence to indicate otherwise, all of this points to the use permitted in 1987 as a use of the appeal property as a single planning unit for a single use as a hostel.
22. Turning to the existing use, there is no dispute that the appeal property (save for part of the ground floor) is at present used as four self-contained flats. This is a description that is used by the Council in its evidence. Such a use would mean that there are at least four planning units within the appeal property and that the four that are the subject of this appeal are used for a purpose falling within Class C3 of Part C, Schedule 1 of the 1987 Order.
23. Even if it were the case that the hostel use took place in three units referred to in the description on the decision notice, these units are likely to have been located in the parts of the property now occupied by the four separate planning units, as referred to above. In these circumstances, there is likely to have been a (further) sub division of the appeal property in order to form the four units subject of this appeal.
24. Although I acknowledge that there is limited information before me on how the appeal property was actually used following the grant of permission in 1987, I note above that there is no dispute that NHHT's use of the appeal property was in accordance with the 1987 permission. The evidence I have regarding the use that was permitted in 1987 leads me to find that there is a material difference between that use and the existing use, on the balance of probability.
25. I have not, of course, considered at this stage whether there was an intervening use between the NHHT's use of the appeal property and the existing use. Before the appellant took ownership of the appeal property, there is reference to its use

by St Christopher's Fellowship and then by Centrepont Soho. I have not considered at this stage how these occupiers used the property and whether the change of use of the property to the existing use took place prior to the appellant taking ownership of the property in August 2022.

26. I can, however, conclude at this stage that it is more likely than not that the use of the appeal property permitted in 1987 has ceased and that the 1987 permission has expired. In view of this, the controls imposed by the conditions of the 1987 permission do not have any effect on the subsequent use of the appeal property. These controls include that the use must only be carried out by those stated in condition 02, that the property must be used as a hostel and that the occupiers must be limited to no more than 7 single homeless persons.
27. Notwithstanding the above, I note that condition 02 also states that 'on cessation of the use of the premises for the purposes hereby permitted, the premises must not be used for any purpose than residential use by a single family'. Whilst I have little information regarding the use of the appeal property prior to the implementation of the 1987 permission, were I to assume that its use was as a single dwellinghouse (or two single dwellinghouses at Nos. 16 and 18), this condition could be read as simply reinforcing the provisions of section 57(2) of the 1990 Act³. Upon the cessation of the permitted use, section 57(2) would allow the use of the appeal property to return to its former use without the need for planning permission. These provisions extend to the use of land or buildings following the cessation of a permitted use subject to a personal condition. In these circumstances, the condition could be regarded as invalid as it is unnecessary.
28. Regardless of the use of the appeal property prior to 1987, if the condition were to be read as limiting the future use of the appeal property (following the cessation of the permitted use) to anything other than a 'residential use by a single family', I would find this element of the condition to be invalid. Caselaw⁴ tells us that it is very unlikely that the statutory scheme⁵ allows for what can be described as a permanent condition on a temporary permission, other than the time (or personal) condition itself. There is nothing before me to alter my conclusions above, which are that the 1987 permission has expired and that the conditions of that permission have no life, that they no longer bind the appeal property and cannot be enforced.
29. Having regard to all of the above, I conclude that the breach of planning control in this case is, on the balance of probability, a material change of use, rather than a breach of condition.

Continuity of the use

30. In view of my conclusions above, I now consider whether or not the use of the appeal property (excluding part of the ground floor) as four flats has continued substantially uninterrupted for a period of four years or more beginning with the date of the breach.
31. By way of a chronology, after NHHT ceased its occupation of the appeal property, the HM Land Registry documents dated July 2021 show that St Christopher's

³ Section 57(2) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.

⁴ *Avon Estates Ltd v Welsh Ministers & Ceredigion CC* [2011] EWCA Civ 553.

⁵ Section 72 of the 1990 Act which informs that conditions may be imposed on the grant of planning permission.

Fellowship took ownership of it (registered under two titles, No 16 and No 18) in 1996. A five year lease, dated 2015, has also been submitted, although this has not been properly dated or signed by the landlord. Notwithstanding this, the appellant has referred to this in suggesting that in 2015 Centrepont Soho took occupation of the appeal property as the leaseholder from the landlord, St Christopher's Fellowship. A second lease, dated 28 May 2021 has also been provided. Whilst this also refers to Centrepont Soho and St Christopher's Fellowship, this has not been signed by any party from Centrepont Soho. The appellant says that it completed its purchase of the property on 30 August 2022 and that its first tenants moved into the property the following October.

32. The appellant's case is that the breach of planning control comprising the material change of use of the appeal property to a use as four self-contained flats occurred in April 2010, which is when it says that the then owner of the property, St Christopher's Fellowship, 'altered the configuration of the premises'.
33. These claims have not, however, been made in any form of statutory declaration. Indeed, the statement does not appear to have been made by any individual with a historic knowledge of the appeal site dating back to April 2010. Instead, the claims appear to be based on the information provided in the email correspondence from the Council's billing and administration manager and officer. The correspondence confirms that the Council has charged council tax and has been billing the owners or occupiers of Flats B, C, D and E within the appeal property (i.e. the units subject of the LDC application) since April 2010. Prior to this, the correspondence confirms that the property was registered for council tax purposes 'as one dwelling (HMO)' between April 1998 and 2010.
34. Whilst council tax records are of assistance as corroboratory evidence in cases such as this, I am mindful that these records are made and kept for no purpose other than for the charging and billing for council tax. A property might be visited to inform these records, but any visits would only be to ensure that council tax charges are correct for the property. Such visits, if carried out, would not have been to establish how the property is used for the purposes of land use planning. For these reasons, I am not persuaded that the Council tax records for the appeal property are, on their own, sufficiently precise and unambiguous evidence of the actual use of the property since April 2010. Even if the material change of use had occurred in April 2010, the payment of council tax is not sufficient on its own to demonstrate that the use continued substantially uninterrupted since that time.
35. Notwithstanding this, there is some contradiction in the appellant's evidence. Centrepont Soho occupied the appeal property from 2015 to August 2022. Whilst the appellant's case is that the use as four flats continued during Centrepont Soho's occupation of the property, the 'permitted use' specified in the leases is not consistent with this. These describe the use as 'short-term accommodation for up to seven vulnerable young people and an office for the purpose of managing the accommodation'. There is no dispute that the office associated with the use is likely to have been contained within the part of the appeal property that is not subject of this appeal. There is, however, no reference in either lease to the provision of the accommodation for up to seven vulnerable people within four self-contained units in the remainder of the property.
36. The appellant says that Centrepont Soho were not permitted to make any alterations to the property and that, for this reason, the layout of the property

remained unchanged from 2015 up until the planning officer's visit to the site in 2022. The appellant has not, however, provided any evidence to corroborate these claims. Such evidence might include a layout plan of the property dating from any time between 2010 to 2022 or a written statement from an individual with a knowledge of the internal layout of the property prior to the appellant's purchase of the site.

37. I note that the estate agent details relating to the sale of the property in 2021 say that the property was at the time 'arranged as 4 self-contained units/flats plus offices'. Whilst I acknowledge that the layout plans on this document show bathrooms and kitchens that are more consistent with the sub-division of the property into separate units, I am not satisfied that these show that the units referred to were self-contained. For example, as well as an external access to the lower ground floor accommodation at No 18, this accommodation appears to be open to the office accommodation above. The plans also appear to show open access from the (upper) ground floor accommodation at No 16 to the accommodation at first floor.
38. The annotated floor plan submitted with the LDC application shows a slightly altered internal layout when compared with the estate agent's details, where the internal connections referred to above are not present. Indeed, the floor plan of the existing arrangements show that each of the four units subject of this appeal is self-contained.
39. The appellant is best placed to provide evidence of the use of the appeal property since August 2022, when it took ownership. Accordingly, the appellant's description of the use of the appeal property since that time is reliable, although it is not extensive. I also note that this element of the evidence is provided by the appellant's planning agent, rather than by an individual from the appellant company with a knowledge of the use of the site since August 2022. Nevertheless, even if this evidence was sufficient to demonstrate the continuity of the use claimed since October 2022, which is when the appellant says the first tenants moved in, this would not cover the necessary period of four years or more.
40. Whilst the Council suggests that its email exchange with Centrepont Soho contradicts the appellant's version of events prior to August 2022, this has not been provided. Nevertheless, I have found deficiencies and a degree of contradiction in the appellant's evidence with regard to the use of the property before it took ownership.
41. All things considered, the appellant has failed to discharge the burden of proof in this case. Taken as a whole, the appellant's evidence is not sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of the appeal property as four self-contained flats has continued substantially uninterrupted for a period of four years or more beginning with the date of the breach. For these reasons, I cannot conclude that the use was lawful at the time the LDC application subject of this appeal was made.

Conclusion

42. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for Flats B at first floor level, Flat C at ground and first floor level (rear right), Flat D at basement floor level (right) and Flat E at basement level (left) is well-founded and that the appeal should fail. I will

exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

J Moss

INSPECTOR